



DATE: 24 February 1987  
CASE NO. 87-INA-603

IN THE MATTER OF

Roland and Blanca Lorenzo,  
Employer

on behalf of

Carmen Maria Hernandez Aquilar,  
Alien

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge; and Brenner, DeGregorio, Fath,  
Levin, and Tureck, Administrative Law Judges

**DECISION AND ORDER**

This proceeding was initiated by the above named Employer who requested administrative-judicial review, pursuant to 20 C.F.R. Section 656.26, from the determination of a Certifying Officer of the U.S. Department of Labor denying an application for labor certification which the Employer submitted on behalf of the above named Alien, pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182 (a)(14) [hereinafter, the Act.]

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work (1) there are not sufficient workers in the United States who are able, willing, qualified, and available for employment and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

The procedures governing labor certification are set forth at 20 C.F.R. Part 656. An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. §656.21 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

This review of the denial of labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File [hereinafter, AF], and any written arguments of the parties. 20 C.F.R. §656.27(c).

### STATEMENT OF THE CASE

The employers, Roland and Blanca Laurenzo, filed an application for alien employment certification on behalf of Carmen Maria Hernandez Aguilar on 4 April 1986. The position offered was that of a live-in domestic houseworker. The duties included housework, childcare, cooking, cleaning, feeding family pets, and acting as a personal companion to the employer. The hours for the job were listed as 6:00 a.m. to 12:00 p.m. and 4:00 p.m. to 6:00 p.m. Monday through Friday. The salary offered was \$215.00 per week and the experience required was three months.

The employers advertised the job for three consecutive days in the Houston Post. Two United States applicants responded. One was rejected because she refused to live in the employer's household. The other potential applicant failed to respond to the employer's invitation to fill out an application.

The certifying officer found that the live-in requirement was unduly restrictive and that the employer had failed to establish a business necessity for requiring the employee to live in its house. The certifying officer instructed the employer to document the need for a live-in domestic. The employer responded by attempting to establish, first, that Mr. Laurenzo was required to travel extensively on business and that Mrs. Laurenzo's presence was necessary on those business trips, and, second, that Mrs. Laurenzo's own work for the restaurant required in excess of forty hours a week of her time. The employer submitted: Mrs. Laurenzo's work schedule covering the four month period between August and December of 1986; a statement from Mrs. Laurenzo regarding her work schedule; and a company memorandum and a newspaper clipping reflecting Mrs. Laurenzo's participation in some of her employer's after-hour business and social gatherings.

The employer states that Mrs Laurenzo's job duties included the following: 1) aiding, assisting, and escorting her father-in-law Ninfa Laurenzo, the chairman and chief executive officer of Ninfa's, Incorporated, to all business and social functions; representing Ninfa's at cooking demonstrations in local department stores; handling all cashier reports from two shifts for ten restaurants; printing out a sales journal for Ninfa Laurenzo; handling all bank deposits; ordering office supplies; handling all incoming and outgoing mail; and making out the payroll checks.

Mrs. Laurenzo's schedule indicates that she conducted six cooking demonstrations over a four month period at Foley's Department Store. She also accompanied her father-in-law and husband on a business trip to Mexico (Ninfa's, Incorporated is a mexican style restaurant) and attended a party there given by one of Ninfa's, Incorporated's vendors. She attended five business related luncheons, three business related dinners, and three business related parties with Ninfa or

with business associates. The schedule also indicates a business trip to Dallas, Texas with Ninfa Laurenzo.

The certifying officer denied certification finding that the employer's requirements were too restrictive. First, the certifying officer found that the job could be performed by a live-out worker. The certifying officer stated that "an employer's unsigned, unattested statement unsupported by other documentation" was insufficient to establish that the employer's need for a live-in worker was a business necessity rather than a mere personal preference. Second, the certifying officer found that the employer had failed to demonstrate why a split shift was necessary.

### CONCLUSION

The schedule submitted by the employer indicates that during a four month period Mrs. Laurenzo represented her employer on a three-day trip to Mexico and a day trip to Dallas. We find this schedule to be inconsistent with the employer's contention that Mrs. Laurenzo travels extensively on business with her husband. Additionally, the remaining items in the schedule indicate that Mrs. Laurenzo performs many valuable services for her employer. The schedule makes no attempt, however, to provide the certifying officer, or this office, with a means of objectively determining the actual number of hours Mrs. Laurenzo spends each week on her work for Ninfa's, Incorporated. It is therefore unclear why the childcare, cleaning, cooking, feeding, and companionship duties in the Laurenzo home could not be performed by a worker or workers who did not live in the Laurenzo home. The requirement that the worker be a live-in thus appears to be a mere personal preference of the employer and the certification was therefore correctly denied. An appropriate order enters.

### ORDER

It is adjudged and ordered that the certifying officer's denial of the Laurenzo's application for alien employment certification be, and is hereby, affirmed.

GEORGE A. FATH  
Administrative Law Judge